

### **REMARKS/ARGUMENTS**

Claims 1-36 are pending in the present application.

This Amendment is in response to the Final Office Action mailed June 23, 2009. In the Final Office Action, the Examiner rejected claims 21-30 under 35 U.S.C. §112 and claims 21-36 under 35 U.S.C. §101 and allowed claims 1-20. Applicant has amended the Specification and canceled claims 31-36 without prejudice. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

#### ***Examiner's Interview***

On September 21, 2009, an Examiner's interview was conducted between the Examiner and Applicant's representative. A Statement of Substance of Interview in compliance with 37 C.F.R. §1.133(b) and MPEP 713.04 is concurrently filed. In the interview, the Examiner indicates that claims 21-30 would be allowable if the Specification is amended accordingly. Applicant appreciates the Examiner's kindness and has amended the Specification.

#### ***Rejection Under 35 U.S.C. § 112***

In the Final Office Action, the Examiner rejected claims 21-30 under 35 U.S.C. §112, first paragraph. Specifically, the Examiner contends that the claims refer to a "machine-accessible storage medium" which is not described or defined in the specification because the Specification only teaches or describes "machine-accessible medium", not a machine accessible storage medium. Applicant respectfully disagrees for the following reasons.

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003). There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976). The PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claim.

The Specification provides ample support for a machine accessible storage medium. For example, paragraph [074] states “The “processor readable or accessible medium” or “machine readable or accessible medium” may include any medium that can store . . . information. Examples of the processor readable or machine accessible medium include an electronic circuit, a semiconductor memory device, a read only memory (ROM), a flash memory, an erasable ROM (EROM), a floppy diskette, a compact disk (CD) ROM, an optical disk, a hard disk..” A person skilled in the art would recognize that a machine accessible storage medium is a machine accessible medium that can store information.

However, in the interest of expediting the prosecution of the application, the Specification has been amended to include the specific phrase “a machine accessible storage medium.”

Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. § 112, first paragraph be withdrawn.

#### ***Rejection Under 35 U.S.C. § 101***

In the Final Office Action, the Examiner rejected claims 21-36 under 35 U.S.C. § 101.

##### **1. Claims 31 and 35:**

In the Final Office Action, the Examiner contends that Claims 31 and 35 are nominally drawn to an “apparatus” comprising “means for storing, means for selecting, means for analyzing” (as in claim 31) means for receiving, means for providing feedback information and means for decoding (as in claim 35) are sub modules within the transmitter (120) and receiver (140) modules. The Examiner contends that the disclosure in paragraph [023] discloses that the transmitter 120 is a module and may be a software module, a hardware circuit, or a combination of both hardware and software. The Examiner makes a similar argument for the input/output module, a generator, and a decoder as belonging to the receiver 140 where the receiver may be a software module, a hardware circuit, or a combination of both hardware and software as disclosed in paragraph [025]. The Examiner concludes that each of the claims 31 and 35 recites a software module and therefore is a computer program. The Examiner then contends that are non-statutory as these claims are directed toward “software per se”.

Applicant respectfully disagrees as presented in the previous response. However, in the interest of expediting the prosecution of the application, Applicant has canceled claims 31-36 and preserves the right to continue prosecuting these claims in the future.

2. Claims 21-30:

The Examiner contends that claims 21-30 are directed to non-statutory subject matter. Applicant respectfully disagrees as presented in the previous response. However, in the interest of expediting the prosecution of the application, Applicant has amended the Specification to remove the references to the fiber optic medium and the RF link.

Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §101 be withdrawn.

*Allowable Subject Matter*

In the Final Office Action, the Examiner allows claims 1-20. Applicant acknowledges the Examiner's allowance of claims 1-20. In light of the above amendments and remarks, Applicant believes that claims 21-30 are also allowable.

***Conclusion***

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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